IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10403 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVINDRAKUMAR DALPATBHAI VAIDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10403 of 1999

Mr. Harshal M.Shah for

MR HJ NANAVATI for Petitioner No. 1

Mr.Pradip D. Bhate, AGP for Respondent No. 1-2

MR SUNIL C PATEL for Respondent No. 3

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/09/2004

ORAL JUDGEMENT

1.1 The petitioner, by way of this petition, has challenged the order dated 15-7-1994 passed by the Chief Officer, Gondal Municipality whereby the services of the

petitioner came to be terminated with effect from 16-8-1984.

2.1 Briefly stated, the facts leading to the present petition are that the petitioner whose name was enrolled with the Employment Exchange, Rajkot was called for interview by Sangramsinhji High School for the post of Clerk--Cum-Typist in the payscale of Rs.950-1500, interviewed by the Selection Committee and appointed to the said post vide order of appointment dated 28-12-1992. However, his said appointment was subject to approval by the Deputy Director(Training) National Training Scheme.

2.2 The petitioner in the meantime on apprehension of termination of service moved an application no.608/1993 before the Tribunal. Ultimately, as approval of the said authority could not be obtained , the services of the petitioner came to be terminated on 16-8-1994. However, the Tribunal on 17-12-1999 while dismissing the application of the petitioner on the ground of having no jurisdiction, granted relief to the petitioner to extent that the services of the petitioner shall not be terminated till 1st December, 1999, and the petitioner while on service by virtue of the order of the Tribunal has preferred the present petition.

3.1 It may be noted that the said interim protection granted by the Tribunal was ordered to be continued by this Court while admitting this Special Civil Application. As the petitioner was continued in service and pending this petition, the respondents have not paid their salaries, by order dated 14th March,2002 this Court (Coram: Miss R.M.Doshit,J.) in Civil Application no.214/2002 (preferred by the petitioner) had directed the respondent-Municipality to pay all the arrears of the petitioner within two months from that day. It was also ordered that the Municipality shall continue to pay salary of the petitioner every month regularly so long as he continues in service.

4.1 It is contended by the learned Counsel for the petitioner that the petitioner is a Commerce Graduate with a degree in Law. He has also passed the Government Commercial Certificate Examination in English, Gujarati and Hindi typewriting. He had secured 19.5 points out of 50 as admitted by the respondents in their affidavit-in-reply and the petitioner was appointed to the post in question by the Selection Committee after following the due procedure as envisaged in Government Circular dated 30-11-1989

5.1 The respondents in their affidavit-in-reply has come forward with a case that the present petitioner is not a meritorious candidate and the appointment of the petitioner is not in consonance with the Government Circular dated 30-11-1989, and therefore, the approval was not granted by the Government. It is also stated that the Gondal Municipality being a public body which is passing through critical financial crisis it is difficult to pay the salary to the petitioner from the grants received from the Government without the approval from the Government.

6.1 In the present case, it is not in dispute that the petitioner possesses the requisite qualifications for appointment to the post in question, Moreover, it is borne out from the record that the petitioner has secured the highest number of points, namely, 19.5 points out of 50 in comparison to the other candidates who were interviewed alongwith the petitioner as can been from the selection process produced by the respondents at page 49 of the paperbook. Thus, prim facie it is established from the document produced by the respondents themselves that the order dated 20-1-1993 refusing sanction to the appointment of the petitioner is contrary to the evidence on record. This being the position, the case of the petitioner merits acceptance.

7.1 In light of the aforesaid discussion, the petition is allowed. The order of termination dated 15th July, 1994 passed by the Chief Officer, Gondal Municipality is hereby quashed and set aside.

7.2 The respondents are directed to regularise the services of the petitioner and also to pay to the petitioner regular salary and other benefits. The grant will be admissible for the purpose of salary and other benefits to be paid to the petitioner. It is clarified that the payment which has been made by the respondent-Municipality to the petitioner shall be reimbursed by way of grant by the Government. Rule is made absolute accordingly.

(K.S.Jhaveri,J.)

stanley-ksj.